

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER HEIM,

Plaintiff,

vs.

JANE DOE, et al.,

Defendants.

1:20-cv-00391-AWI-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM
(ECF No. 22.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS**

I. BACKGROUND

Christopher Heim (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on March 11, 2020. (ECF No. 1.) On May 14, 2020, Plaintiff filed the First Amended Complaint as a matter of course. (ECF No. 13.) On January 4, 2021, Plaintiff lodged a Second Amended Complaint which was filed by the court on January 4, 2021. (ECF Nos. 16, 20.) On March 30, 2021, the court dismissed the Second Amended Complaint, with leave to amend. (ECF No. 21.) On May 3, 2021, Plaintiff filed the Third Amended Complaint which is now before the court for screening. 28 U.S.C. § 1915.

II. SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint is required to contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting this plausibility standard. Id.

III. SUMMARY OF THIRD AMENDED COMPLAINT

Plaintiff is presently incarcerated at Mule Creek State Prison in Ione, California. The events at issue in the Third Amended Complaint allegedly took place at Corcoran State Prison (CSP) in Corcoran, California, when Plaintiff was incarcerated there in the custody of the California Department of Corrections and Rehabilitation (CDCR). Plaintiff names as the sole defendant Correctional Officer Rodriguez (3B Corcoran Kitchen Officer) (“Defendant”).

Plaintiff’s allegations follow:

1 Plaintiff was at CSP Facility 3A, Level III, when he got into a fight, after which he was
2 moved to CSP Facility 3B, Level 4, instead of being placed in administrative segregation and
3 being transferred to another prison within his needs.

4 Two weeks after he was on 3B Level 4, Plaintiff received a job ducat for the on-site
5 facility kitchen. Plaintiff reported to work on the day after orientation. The kitchen workers
6 finished feeding the inmate population. Plaintiff went into the back of the kitchen to put trays
7 through the washer when he felt something hit him in the head. He was being attacked by
8 multiple inmates.

9 Defendant C/O Rodriguez failed to do her rounds, failing to protect Plaintiff who was at
10 high risk when it was avoidable. Plaintiff was not supposed to be there in the first place. When
11 Plaintiff made it out to the dining hall door Defendant Rodriguez was on the computer doing
12 nothing. Plaintiff was taken to Kaweah Delta Hospital by ambulance received 4 staples on his
13 upper forehead, 4 stitches on his nose, and 3 stitches on the right side of his forehead, resulting
14 in psychological damage to his mind.

15 As relief, Plaintiff seeks monetary damages, trial by jury, and a temporary restraining
16 order.

17 **IV. PLAINTIFF'S CLAIMS**

18 The Civil Rights Act under which this action was filed provides:

19 Every person who, under color of any statute, ordinance, regulation, custom, or
20 usage, of any State or Territory or the District of Columbia, subjects, or causes to
21 be subjected, any citizen of the United States or other person within the
22 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

23 42 U.S.C. § 1983.

24 [Section] 1983 'is not itself a source of substantive rights,' but merely provides 'a method
25 for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386, 393-94
26 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman v. Houston
27 Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697 F.3d 1059,
28 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012); Anderson v.

1 Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of a state law
2 amounts to the deprivation of a state-created interest that reaches beyond that guaranteed by the
3 federal Constitution, Section 1983 offers no redress.” Id.

4 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
5 color of state law and (2) the defendant deprived him or her of rights secured by the Constitution
6 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also
7 Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of
8 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983,
9 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act
10 which he is legally required to do that causes the deprivation of which complaint is made.’”
11 Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting
12 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be
13 established when an official sets in motion a ‘series of acts by others which the actor knows or
14 reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479
15 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles
16 the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp.,
17 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010,
18 1026 (9th Cir. 2008).

19 **A. Failure to Protect – Eighth Amendment Claim**

20 The Eighth Amendment protects prisoners from inhumane methods of punishment and
21 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
22 2006). Although prison conditions may be restrictive and harsh, prison officials must provide
23 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v.
24 Brennan, 511 U.S. 825, 832-33 (1994) (internal citations and quotations omitted). Prison
25 officials have a duty to take reasonable steps to protect inmates from physical abuse. Id. at 833;
26 Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure of prison officials to protect
27 inmates from attacks by other inmates may rise to the level of an Eighth Amendment violation
28

1 where prison officials know of and disregard a substantial risk of serious harm to the plaintiff.
 2 E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at 1040.

3 To establish a violation of this duty, the prisoner must establish that prison officials were
 4 “deliberately indifferent to a serious threat to the inmate’s safety.” Farmer, 511 U.S. at 834. The
 5 question under the Eighth Amendment is whether prison officials, acting with deliberate
 6 indifference, exposed a prisoner to a sufficiently “substantial risk of serious harm” to his future
 7 health. Id. at 843 (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)). The Supreme Court has
 8 explained that “deliberate indifference entails something more than mere negligence . . . [but]
 9 something less than acts or omissions for the very purpose of causing harm or with the knowledge
 10 that harm will result.” Farmer, 511 U.S. at 835. The Court defined this “deliberate indifference”
 11 standard as equal to “recklessness,” in which “a person disregards a risk of harm of which he is
 12 aware.” Id. at 836-37.

13 The deliberate indifference standard involves both an objective and a subjective prong.
 14 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Id. at 834.
 15 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate
 16 health or safety.” Id. at 837; Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995).
 17 To prove knowledge of the risk, however, the prisoner may rely on circumstantial evidence; in
 18 fact, the very obviousness of the risk may be sufficient to establish knowledge. Farmer, 511 U.S.
 19 at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995).

20 Here, Plaintiff fails to state a claim against Defendant Rodriguez for failure to protect him
 21 from the attack by other inmates. Plaintiff has not alleged facts showing by inference or
 22 otherwise that Defendant Rodriguez knew Plaintiff was at a substantial risk of serious harm from
 23 other inmates, or that an attack on Plaintiff was likely to occur, yet disregarded the risk to
 24 Plaintiff.

25 Based on the foregoing, the court finds that Plaintiff fails to state a claim for failure to
 26 protect him in violation of the Eighth Amendment.

27 **V. CONCLUSION AND RECOMMENDATIONS**

For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable claims in the Third Amended Complaint. Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely give leave to amend when justice so requires.” However, the Court previously granted Plaintiff leave to amend the complaint, with ample guidance by the Court. Plaintiff has now filed four complaints without stating any claims upon which relief may be granted under § 1983. The court is persuaded that Plaintiff is unable to allege any facts, based upon the circumstances he challenges, that would state a cognizable claim under section 1983. “A district court may deny leave to amend when amendment would be futile.” Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013). The court finds that the deficiencies outlined above are not capable of being cured by amendment, and therefore further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

Therefore, **IT IS HEREBY RECOMMENDED** that pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e):

1. This case be dismissed, with prejudice, for Plaintiff’s failure to state a claim; and
2. The Clerk be directed to close this case.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen days** from the date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **October 30, 2021**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE